

EXECUTION COPY

FROM: CONSTELLATION NEWENERGY, INC.
TO: Bio-Energy Partners
1001 Fannin; Suite 4000
Houston, TX 77002
ATTN: David Unger, Director of Renewable Energy
FAX: 713-328-7411
PH: 713-328-7457

This Agreement dated as of September 26, 2006 (this "Agreement") is between **Bio-Energy Partners** ("Seller") and **Constellation NewEnergy, Inc.** ("Buyer") (each individually a "Party" and collectively the "Parties") regarding a power purchase and sale transaction on the terms and conditions set forth herein.

1. Commercial Terms. The terms of this transaction are as follows:

REF: _____

Buyer: **Constellation NewEnergy, Inc.**

Seller: **Bio-Energy Partners**

Facility: Seller's High Acres, NY landfill gas-to-energy facility ("Facility").

Delivery Point: Seller's interconnection point with New York State Electric & Gas ("NYSEG") transmission system, such point known as PTID 23767 in Zone C, NY according to the New York Independent System Operator ("NYISO").

Delivery Period: Commencing HE 1:00 EPT January 1, 2007 and continuing through and including HE 24:00 December 31st, 2008 (including NERC Holidays)

Product: All of the following (collectively, the "Product"), to the extent produced by the Facility and/or the Facility is entitled to such during the Delivery Period:

- (a) The positive net electric energy exported from the Facility and measured at the Revenue Meters ("Energy");
- (b) up to 3.5 MW of NYISO Rest of State Unforced Capacity ("UCAP"), which quantity of UCAP shall be the quantity determined by the NYISO after any required demonstrated maximum net capacity ("DMNC") testing. Seller shall, at its own expense (and in coordination with Buyer in accordance with "NYISO Bidding, Scheduling and Billing" below) conduct (or cause to be conducted) DMNC testing for the Facility as required by the NYISO as applicable to the Facility;
- (c) all Ancillary Services and other payments and benefits attributable to, and to which the Facility is entitled; and
- (d) renewable energy attributes associated with the generation of Energy by the Facility which is delivered to the Delivery Point ("RECs").

Seller does not represent, warrant or covenant that any quantity of the Product or any component of the Product will be generated or produced, but Seller shall provide all components of the Product

attributable to, and to which the Facility is entitled, during the Delivery Period solely and exclusively to Buyer. Seller shall use reasonable commercial efforts to (i) maintain and operate the Facility in accordance with its past practice in an effort to produce the maximum amount of Energy consistent with applicable laws, regulations and operating standards, and (ii) provide Buyer with generation statistics and other information necessary for Buyer to (A) perform its obligations under "NYISO Bidding, Scheduling and Billing" below, and (B) establish the Product generated by the Facility and the Product to which the Facility is entitled under NYISO guidelines and applicable state law, including without limitation, executing one or more affidavits confirming factual matters relating to actual or potential renewable energy generated by the Facility. Except as otherwise specifically provided in this Agreement, Buyer, at Buyer's sole cost and expense, shall be responsible for negotiating with the NYISO, any governmental or regulatory entity or any other third party to establish Product components under NYISO guidelines and applicable state law.

Term: This Agreement shall become effective on the date first above written and shall continue in full force and effect until the earlier of (1) expiration of the Delivery Period or (2) the date the Agreement is terminated earlier as provided herein; provided, however, that upon termination hereof, the obligations and liabilities that are expressly stated to survive such termination shall continue in full force and effect in accordance with such express terms.

Hourly Quantity Of Energy: Approximately 3.0 MWhs on average, but ranging between 0 MWhs and in no event in excess of 3.7 MWhs

The Hourly Quantity does not constitute a firm quantity of Energy to be generated by Facility and sold to Buyer hereunder, such Hourly Quantity is merely an estimation of such quantity of Energy to be generated by the Facility at the Delivery Point.

Price: USD \$82.50 PER MEGAWATT HOUR of Energy delivered during the Delivery Period (the "Price"), which Price constitutes full compensation to Seller for all Product generated by or to which the Facility is entitled. Buyer shall not be entitled to any discount to the Price in the event that one or more components of the Product are absent because they were not produced or because the Facility is not entitled to such Product component; provided, however, that, Seller shall pay all costs, expenses and/or charges by the NYISO or any third party in respect of the Facility's back-up and maintenance power requirements and shall indemnify Buyer for any such costs, expenses and/or charges paid by Buyer in respect thereof.

Scheduling: Seller shall provide Buyer, by 3:00 pm Eastern time each Thursday during the Delivery Period, an estimated hourly Energy generation schedule for the next 7 days (a "Schedule") for the Facility in substantially the form of Exhibit A hereto, and Seller shall provide a revised hourly Energy generation schedule in the event that any Schedule previously submitted by Seller to Buyer is modified by Seller or otherwise. Any such revised Schedules delivered by Seller to Buyer in respect of a Sunday, Monday or Tuesday shall be submitted and confirmed by Seller to Buyer no later than the preceding Friday at 3:00 pm Eastern time.

Notwithstanding the immediately preceding paragraph, Seller shall have no liability for failing to match actual generation to scheduled generation if it provides Schedules as provided above, unless, actual generation for any day varies by more than fifty percent (50%) from the last such Schedule delivered by Seller to Buyer and such variation did not occur as a consequence of (i) an event of Force Majeure, or (ii) action by Seller that was operationally reasonable under the circumstances, provided

however, if Seller becomes liable for failing to match actual generation to scheduled generation as provided herein, Buyer's sole remedy shall be the remedy set out in Section 3 (a) of this Agreement.

Planned Outages: Seller shall take Planned Outages in accordance with the schedule attached hereto as Exhibit B, as modified and clarified by Seller and set forth in the Schedule to be delivered by Seller to Buyer pursuant hereto. "Planned Outage" means any outage other than Forced Outages U1-Unplanned (Forced) Outage-Immediate, U2-Unplanned (Forced) Outage-Delayed, or U3-Unplanned (Forced) Outage-Postponed, each as defined in the NERC Generating Unit Availability Data System (GADS) Data Reporting Instructions, page III-7, 10/02.

Metering: Seller shall provide hourly metering data of actual Energy delivered and shall use reasonable commercial efforts to provide such metering data within two days following delivery. Metering data shall be from Niagara Mohawk's revenue meters (the "Revenue Meters") at the Delivery Point and utilized by the NYISO for billing purposes, which shall determine Energy generated by the Facility and delivered by the Facility at the Delivery Point. Seller shall use reasonable commercial efforts, at Buyer's cost and expense, to provide real-time data of actual Energy generated by the Facility; provided, however, that in the event of any discrepancy between such real-time data and data from the Revenue Meters, the Parties shall, for all purposes of this Agreement, rely on data from the Revenue Meters.

NYISO Bidding, Scheduling and Billing: Seller shall take any and all commercially reasonable action necessary to appoint and designate Buyer as its agent for bidding, scheduling and billing in respect of any and all Products and the Facility with the NYISO. Pursuant to such appointment, Buyer shall be responsible for:

- (i) entering the proper operating and dispatch characteristics in respect of the Facility with the NYISO in accordance with the NYISO rules and protocols;
- (ii) notifying and providing the NYISO and NYSEG with information with respect to all planned outages, unplanned outage and De-rates information;
- (iii) scheduling voltage testing with the NYISO and NYSEG and the NYISO voltage testing;
- (iv) scheduling DMNC with the NYISO;
- (v) responding to all bidding and scheduling questions raised by the NYISO with respect to the Facility;
- (vi) reconciling all invoices and other billing information received from the NYISO with respect to the Facility against actual generation and other data from the Facility;
- (vii) collecting all operational ("GADS") data with respect to the Facility for submission to the NYISO on or before the twentieth (20th) day of each calendar month during the Delivery Period; and
- (viii) in concert with Seller, ensuring certification of all NERC requirements with respect to the Facility.

Except as otherwise provided in this Agreement, Buyer shall be responsible for all other NYISO requirements of the Facility and any penalties and other liabilities resulting from Buyer's actions taken as Seller's agent, unless and to the extent attributable to the negligence or willful misconduct of Seller.

Post-Termination NYISO Bidding, Scheduling and Billing Option: Upon termination of this Agreement prior to the end of the Delivery Period for any reason, including without limitation, Seller's Event of Default, and at Seller's option if Buyer is then and continues to be a member of the NYISO, Buyer shall continue to

perform its obligations under the "NYISO Bidding, Scheduling and Billing" subsection above for up to 90 days and use reasonable efforts to cause NYISO payments for the Product to be credited directly to Seller's account (or failing such direct credit, Buyer shall remit such payments to Seller); provided, however, that during such period, Seller shall be responsible for all NYISO penalties and other liabilities resulting from Buyer's actions taken as Seller's agent, unless and to the extent attributable to the gross negligence or willful misconduct of Buyer. If Seller exercises its option under this subsection (and has not terminated Buyer's performance under this paragraph as provided in the immediately following sentence), then Seller shall pay Buyer an amount equal to USD \$2.00 per Megawatt hour of Energy delivered during such period. Seller may terminate Buyer's performance under this paragraph at any time by giving Buyer at least 48 hours notice thereof.

RECs:

During the Term of this Agreement, the delivery of Energy to Buyer at the Delivery Point, shall represent a transfer and assignment to Buyer of all right and title to and claim over all RECs or emission attributes associated with the specified MWh generated by the Facility and delivered to Buyer. Each Party agrees in good faith to cooperate and use commercially reasonable efforts to enable Buyer successfully to own, market, sell, trade or otherwise dispose of, the purchased RECs, all in accordance with Connecticut's Renewable Portfolio Standard and the NEPOOL GIS Operating Rules. "NEPOOL GIS" means the New England Power Pool Generation Information System, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that accounts for the generation attributes of electricity generated within New England. Buyer shall, with reasonable cooperation from Seller, (a) comply with, and maintain the documentation required under the Connecticut Renewable Portfolio Standards; and (b) comply with any ISO requirements applicable to RECs. Seller shall cooperate with Buyer in connection with the completion of (a) qualification of the RECs under the Connecticut Renewable Portfolio Standards; and/or (b) Buyer documentation to register the RECs in the name of Buyer, and/or to allow Buyer to resell the RECs. Buyer will be responsible for maintaining and accounting for all RECs transferred to Buyer hereunder on the NEPOOL GIS system. Seller represents that Seller has the necessary characteristics for qualification of the RECs under the Connecticut Renewable Portfolio Standards as of the date of this Agreement, but makes no ongoing warranty to Buyer that the RECs will continue to qualify under the Connecticut Renewable Portfolio Standards, in the event of a change in applicable law or regulation during the Term of this Agreement. Seller shall have no liability to Buyer if Buyer fails to or is unable to resell the RECs for any reason, unless such failure or inability results from Seller's failure to cooperate with Buyer as set forth in this paragraph.

2. Performance, Title & Delivery.

Subject to the terms of this Agreement, during the Delivery Period, or applicable portion thereof, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, at the Delivery Point all Product, if any, and Buyer shall pay Seller the Price therefor. Except as otherwise expressly provided in this Agreement, Seller shall be responsible for any and all costs, expenses and charges imposed on, and all liability and risk of loss associated with the possession, transmission and delivery of the Product up to the Delivery Point, and Buyer shall be responsible for any costs or charges imposed on, and all liability and risk associated with possession of and transmission of the Product at and from the Delivery Point. Seller warrants good and marketable title to all Product delivered and provided to Buyer. Seller represents that it has not sold, and covenants that during the Delivery Period it shall not sell, the Product to which Buyer is entitled under this Agreement to any other person or use the Product to which Buyer is entitled for any purpose other than the sale to Buyer under this Agreement. Seller agrees to indemnify and hold harmless Buyer from all claims, liabilities, taxes, and damages arising in relation or respect to all Product prior to the Delivery Point. Buyer agrees to indemnify and hold harmless Seller from all claims, liabilities, taxes and damages arising in relation or respect to all Product at and from the Delivery Point.

3. Liability For Non-Performance.

(a) Unless and to the extent required by an event of Force Majeure (as defined herein) and without its fault or negligence, if Seller (i) delivers the Energy component of Product to any person or entity other than Buyer during the Delivery Period, or applicable portion thereof, then Seller shall pay Buyer, on the date payment would otherwise be due to Seller an amount equal to the product of (A) the quantity (in MWhs) so delivered and (B) the positive difference, if any, obtained by subtracting the Price from the Replacement Price, and (ii) Delivers any component of the Product (other than the Energy component) to any person or entity other than Buyer during the Delivery Period, or applicable portion thereof, then Seller shall pay Buyer, on the date payment would otherwise be due to Seller an amount equal to the Replacement Price of such Product component, or if Seller's failure to cooperate with Buyer pursuant to the paragraph in Section 1 entitled "RECs" results in Buyer's failure or inability to resell the RECs, then Seller shall pay Buyer, on the date payment would otherwise be due to Seller an amount equal to the Replacement Price of the RECs that Buyer failed to or was unable to sell as a result of Seller's failure to cooperate. "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases a substitute or replacement Product component to replace the quantity of Product component delivered by Seller to such third party, plus additional transmission costs, if any, incurred by Buyer as a consequence of Seller's failure to deliver such Energy to Buyer, less any costs avoided by Buyer as a consequence of Seller's failure to perform; or, absent any such substitute or replacement purchase, the market price for such quantity of substitute or replacement Product at the Delivery Point during the Delivery Period, or applicable portion thereof, as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall the Replacement Price include any penalties, ratcheted demand or similar charges or any stranded costs.

(b) Unless and to the extent prevented from doing so by an event of Force Majeure (as defined herein) and without its fault or negligence, if Buyer fails to receive the Energy component of Product from Seller in accordance with the terms and conditions of this Agreement, Buyer shall pay Seller, on the date payment would otherwise be due from Buyer, an amount equal to the product of (i) the quantity (in MWhs) of Energy not so received and (ii) the positive difference, if any, obtained by subtracting the Sales Price from the Price. "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells the Energy not received by Buyer less additional transmission costs, if any, incurred by Seller as a consequence of Buyer failure to perform, plus any costs Seller avoids as a consequence of Buyer failure to perform; or, absent a resale, the market price for such quantity of Energy for delivery at the Delivery Point during the Delivery Period, or applicable portion thereof, as determined by Seller in a commercially reasonable manner.

(c) Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement. The remedies set out above shall constitute the sole remedies of each Party with respect to the non-performance or default of the other Party hereunder.

4. Billing and Payment.

Each month, Buyer shall transmit to Seller a statement setting forth the total amount due for the Product delivered by Seller during the prior month or portion thereof during the Delivery Period, which amounts shall be calculated based upon the data received from the Revenue Meters confirming the quantity of Energy delivered by the Facility at the Delivery Point during such month. Such statement shall also include any other charges due from or to Seller, including liquidated damages, interest, or payments or credits between the Parties relating to prior or contemporaneous transactions or previous deliveries under this Agreement. Absent data from the Revenue Meters as to actual quantities of Energy delivered at the Delivery Point, billing and payment will be based on scheduled quantities, with adjustments made in the next billing cycle to reflect any deviations between estimates and actual Energy deliveries at the Delivery Point. On the twentieth (20th) day of each month after a month during the Delivery Period when Energy was delivered hereunder, Buyer shall pay, by wire transfer in accordance with the Notices Section hereof, the amount due in respect of all Products delivered during the immediately preceding month. Overdue payments shall accrue interest thereon from,

and including, the due date thereof, to, but excluding, the date of payment, at two (2) percent over the per annum prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" (the "Interest Rate"); provided, however, that the Interest Rate shall never exceed the maximum rate permitted by applicable law. If Seller, in good faith and within six (6) months after the date it receives a statement from Buyer pursuant to this Section 4, disputes the accuracy of a statement, Buyer shall provide a written explanation of the basis for the dispute and Buyer shall pay the portion of such statement conceded by Seller to be correct no later than the due date. If any amount withheld by Buyer is ultimately determined to be due to Seller, it shall be paid within ten (10) days of such determination, along with interest accrued at the Interest Rate from the date due until the date paid. Inadvertent overpayments shall be returned by Seller upon request or deducted by Seller from subsequent statements. "Business Day" means a day on which Federal Reserve member banks in New York City are open for business and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Standard (or Daylight) time.

5. Netting.

If Buyer and Seller are each required to pay amounts in respect of purchases/sales hereunder or under any other contract between the Parties on the same day, then, upon notice from one Party to the other, such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

6. Force Majeure.

"Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under this transaction, which event or circumstance was not anticipated as of the date the transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure or change in cost of Seller's fuel supply; or (iv) Seller's ability to sell the Product at a price greater than the Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a transmission provider unless (i) such Party has contracted for firm transmission with a transmission provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the transmission provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.

7. Default.

(a) An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following, notwithstanding any other provision of this Agreement or any other Agreement between the Parties ("Other Agreement") to the contrary: (i) the failure to make, when due, any payment due and payable under this Agreement or any Other Agreement, if such failure is not remedied within Five (5) Business Days after written notice thereof is given by the other Party; (ii) any representation or warranty made by the Defaulting Party herein or in any Other Agreement shall prove to be false or misleading in any material respect; (iii) the failure of the Defaulting Party to perform any covenant set forth in this Agreement or any Other Agreement (other than its obligations to deliver or receive energy, the remedy for which is provided in Section 3 hereof or otherwise in any Other Agreement) and such failure is not cured within two (2) Business Days after written notice thereof to the Defaulting Party; (iv) the filing of a petition or other commencement or authorization by the Defaulting Party of the commencement of a proceeding under any bankruptcy or similar law for the protection of creditors or the filing of any such petition or commencement of any such proceeding against the Defaulting Party; (v) the Defaulting Party otherwise becomes bankrupt or insolvent, however evidenced; (vi) the Defaulting Party becomes unable to pay its debts as they fall due; (vii) a Party fails to provide

Performance Assurance in accordance with Section 15 hereof; or (viii) any event referenced in clauses (i) – (vi) occurs with respect to any party providing Performance Assurance or a guaranty in respect of such Party's obligations hereunder.

(b) After the occurrence of an Event of Default with respect to a Defaulting Party, the other Party (the "Non-Defaulting Party") shall have the right, without prior notice, immediately and at any time thereafter while the Event of Default remains uncured, to liquidate and terminate this Agreement and any Other Agreement then outstanding between the Parties by terminating and liquidating this Agreement and such Other Agreement at its market value at such time and by setting off and netting the market values of such liquidated and terminated agreements to a single liquidated amount, payable within one Business Day by the Party owing the greater such amount to the other.

(c) The Defaulting Party shall indemnify and hold the other Party harmless from all reasonable costs and expenses, including reasonable attorney fees, incurred in the exercise of its remedies hereunder.

8. Limitation of Remedies, Liability and Damages.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR ANY SUCH DAMAGE, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, OR TO BE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ESTIMATED HARM OR LOSS.

9. Audit.

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. In order to enable the Parties to exercise their dispute rights pursuant to Section 4 hereon, this Section will survive any termination of the Agreement for a period of six months from the date of the final statement delivered pursuant to Section 4 of this Agreement.

10. Representations and Warranties.

Each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement to which it is a party; (iii) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement to which it is a party are within its powers, have been duly authorized by all necessary action and do not violate any of the

terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it; (iv) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (v) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (vi) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement or any other document relating to this Agreement to which it is a party; and (vii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

11. Master Document.

If the Parties execute a master enabling agreement (hereinafter the "Master Document") governing the purchase and sale of electric energy and related products, from the effective date of such Master Document, the terms and conditions hereof with the exception of the Commercial Terms of Section 1 shall cease to govern or apply to this Agreement, and the terms of the Master Document shall thereafter govern. Neither Party shall be under any obligation to enter into a Master Document with the other Party.

12. Governing Law.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. This Agreement constitutes a "forward contract" and the Parties are "forward contract merchants," within the meaning of the United States Bankruptcy Code. Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort. The provisions of this Agreement dealing with netting, setoff, default, termination, acceleration, liquidation, or closeout including but not limited to the provisions contained in Section 4.5 and Section 9.3, shall be deemed to be a "master netting agreement" within the meaning of the U.S. Bankruptcy Code.

13. Notices.

All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice shall be deemed to have been received by the close of the day on which it was transmitted or hand delivered (unless transmitted or hand delivered after the close of recipient's business or on a day on which recipient is not open for business, in which case it shall be deemed received at the close of the next day on which recipient is open for business). Notice by overnight mail or overnight courier shall be deemed to have been received one (1) day after it was sent (unless delivered after the close of recipient's business or on a day on which recipient is not open for business, in which case it shall be deemed received on the next day on which recipient is open for business). A Party may change its addresses by providing notice of same in accordance herewith:

To Buyer:

NOTICES & CORRESPONDENCE:
Constellation NewEnergy, Inc.
810 Seventh Avenue, Suite 400
New York, NY 10019

PAYMENTS:

Buyer Bank
Acct:
ABA Routing #
Reference:

FAX No.: (212) 883-5888
Phone No.: (212) 885-6400
Attn: Dan McLaughlin and Robert Weir

Confirmation:

INVOICES:

Constellation NewEnergy, Inc.
111 Market Place, 5th Floor
Baltimore, MD 21202
FAX No.: (410) 468-3673
Phone No.: (410) 468-3677
Attn: Settlements Desk

SCHEDULING & OPERATIONAL CORRESPONDENCE:

Constellation NewEnergy, Inc.
111 Market Place, 5th Floor
Baltimore, MD 21202
FAX No.: (410) 468-3673
Phone No.: (410) 468-3510
Attn: Michael Constantine

To Seller:

NOTICES & ALL CORRESPONDENCE:

Bio-Energy Partners
1001 Fannin, Suite 4000
Houston, TX 77002
Attn: Controller
FAX No.: 713-328-7411

Phone No.: 713-328-7345

PAYMENTS:

Bank: Bank One, NA
ABA Routing # 111000614
Acct No. 1571581071

OPERATIONAL CORRESPONDENCE

Keith Ott, Operator
Phone No.: 585-223-8150
Fax No.: 585-223-0528

14. Assignment.

Neither Party shall assign this Agreement or its rights or obligations hereunder without the prior written consent of the other Party; provided, however, either Party may, without the consent of the other Party (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements (without relieving itself from liability hereunder), (ii) transfer or assign this Agreement to an affiliate of such Party, which affiliate's creditworthiness is comparable to or higher than that of the transferring Party at the time of transfer, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party, so long as such transferee's or assignee's creditworthiness is comparable to or higher than that of the transferring or assigning Party's creditworthiness at the time of transfer. In each such case, any assignee shall agree to in writing be bound by the terms and conditions hereof.

15. Performance Assurance.

Should either Party have reasonable grounds to believe that the creditworthiness of the other Party has become unsatisfactory, then the dissatisfied Party (the "Requesting Party") may require assurance of the other Party's ability to perform any obligation hereunder. Such assurance ("Performance Assurance") may include (i) posting of a letter of

credit in favor of the Requesting Party by an issuing bank reasonably acceptable to the Requesting Party, (ii) posting of cash collateral with the Requesting Party, or (iii) other security reasonably acceptable to the Requesting Party; provided, however, that in no event shall the Requesting Party require the value of such Performance Assurance on any day to exceed the amount that would be payable by the other Party as a termination payment under Section 7. In the event that such other Party fails to provide such Performance Assurance within two (2) Business Days from the date of such Party's receipt of the Requesting Party's request, then an Event of Default shall be deemed to have occurred and the Requesting Party shall be entitled to the remedies set forth under the Default section above, as the Non-Defaulting Party.

16. General.

No amendment or modifications to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee of this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. Seller and Buyer agree that neither Party shall seek to change or amend this Agreement in any way through making application to the FERC or to any other governmental agency or authority, and that this Agreement shall not be subject to change through unilateral application by either Party under Sections 205 and 206 of the Federal Power Act (or pursuant to any other provision of applicable law). Each Party hereby irrevocably waives the right to seek any change or to support any application or complaint or other legislative, judicial or regulatory action made seeking a change in the rates or a change in the terms and conditions of this Agreement, absent the mutual agreement of the Parties. To the extent, if any, that this Agreement or the Facility is subject to the jurisdiction of the FERC, then absent explicit agreement of the Parties to any proposed changes, the standard of review for any changes to this Agreement or any transaction hereunder that is proposed by a Party, a non-party or the FERC acting *sua sponte* will be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S.332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine).

If you are in agreement with the terms and conditions of this Agreement, please execute below as indicated and return to us by fax.

Regards,

Constellation NewEnergy, Inc.

By: 

Name: Robert Weir

Title: Vice President

Agreed by Seller:

Bio-Energy Partners

By: 

Name: PAUL PABOR

Title: Vice President

EXHIBIT A

Form of Energy Generation Schedule

Complete (i) every Thursday by 3:00 pm Eastern time and upon reasonable request by Constellation NewEnergy, Inc. ("CNE") (ii) or if requested by CNE, by 3:00 pm Eastern time two days prior to such particular day on which Energy will be generated and (iii) in the event that any Schedule previously submitted to CNE is modified by Bio-Energy Partners or otherwise.

Date: _____

Time: _____

Page: _____

Date of Dispatch: _____

Fax to: Constellation NewEnergy, Inc.

111 Market Place, Suite 500

Baltimore, MD 21202

Fax No. _____

Export (MW, measured at the Delivery Point*{1})

Hour	Sat	Sun	Mon	Tues	Wed	Thur	Fri
	/ /	/ /	/ /	/ /	/ /	/ /	/ /
0:00-1:00							
1:00-2:00							
2:00-3:00							
3:00-4:00							
4:00-5:00							
5:00-6:00							
6:00-7:00							
7:00-8:00							
8:00-9:00							
9:00-10:00							
10:00-11:00							
11:00-12:00							
12:00-13:00							
13:00-14:00							
14:00-15:00							
15:00-16:00							
16:00-17:00							
17:00-18:00							
18:00-19:00							
19:00-20:00							
20:00-21:00							

Bio-Energy Partners

Date:

EXHIBIT B
PLANNED OUTAGE SCHEDULE

<u>Month</u>	<u>Plant Section</u>	<u>Duration</u> <u>(days)</u>
Jan - 07		
Feb - 07		
Mar - 07		
Apr - 07		
May - 07		
Jun - 07		
Jul - 07		
Aug - 07		
Sep - 07		
Oct - 07		
Nov - 07		
Dec - 07		

EXHIBIT A

Form of Energy Generation Schedule

Complete (i) by 10:00 A.M. Eastern time of each Business Day and upon reasonable request by Constellation Energy Commodities Group, Inc. ("CCEG") (ii) for weekend days and holidays, by 10:00 A.M. on the last Business Day prior to such weekend day or holiday and (iii) in the event that any Schedule previously submitted to CCEG is modified by WM Renewable Energy, LLC.

Date: _____

Time: _____

Page: _____

Date of Dispatch: _____

Fax to: Constellation Energy Commodities Group, Inc.

111 Market Place, Suite 500

Baltimore, MD 21202

Fax No. _____

Export (MW, measured at the Delivery Point*[1])

Hour	Sat	Sun	Mon	Tues	Wed	Thur	Fri
	/ /	/ /	/ /	/ /	/ /	/ /	/ /
0:00-1:00							
1:00-2:00							
2:00-3:00							
3:00-4:00							
4:00-5:00							
5:00-6:00							
6:00-7:00							
7:00-8:00							
8:00-9:00							
9:00-10:00							
10:00-11:00							
11:00-12:00							
12:00-13:00							
13:00-14:00							
14:00-15:00							
15:00-16:00							
16:00-17:00							
17:00-18:00							
18:00-19:00							
19:00-20:00							
20:00-21:00							

21:00-22:00							
22:00-23:00							
23:00-24:00							

Signed: _____
WM Renewable Energy, LLC

Date: _____

EXHIBIT B

PLANNED OUTAGE SCHEDULE

<u>Month</u>	<u>Plant Section</u>	Duration <u>(days)</u>
Mar-08		
Apr – 08		
May – 08		
Jun – 08		
Jul – 08		
Aug – 08		
Sep – 08		
Oct – 08		
Nov – 08		
Dec – 08		
Jan – 09		
Feb – 09		